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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/570,347

06/28/2006

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EXAMINER

MEYER, KATY E

ART UNIT

PAPER NUMBER

3618

NOTIFICATION DATE

DELIVERY MODE

05/26/2010

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

gbpatent@gbpatent.com  
pto@gbpatent.com

<b>Office Action Summary</b>	<b>Application No.</b> 10/570,347	<b>Applicant(s)</b> GIRARD ET AL.	
	<b>Examiner</b> Katy Meyer	<b>Art Unit</b> 3618	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 12 February 2010.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 8-39 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 8-39 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                    | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)         | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 29, 32, 34, 37, and 39 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The specification does not explicitly disclose a ski lacking a boot sole-engaging rib.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**Claims 8 – 15 and 17 – 39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gignoux et al. (US 6,390,494) in view of Bejean et al. (US 5,011,179) et al.**

As for claim 8, Gignoux et al. disclose a cross-country ski system (Fig. 1) comprising: a cross-country ski (9) comprising an upper surface including a central zone constructed and arranged to receive a device structured and arranged to be connected

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to a part of the boot (62) in an area corresponding to the metatarsophalangeal bending zone of a wearer's foot for binding a boot to the ski (see incorporated reference, US 6,017,050, which shows the location of the bars with respect to a boot); the central zone of the ski comprising a binding zone (see 7) having a location for receiving the binding device (1); the upper surface of the ski comprising an upper support surface (see Fig. 1) arranged on at least one of two lateral sides of the location to receive the binding device, the upper support surface being exposed laterally of the binding zone for coming in direct contact with the boot when a skier using the cross-country ski system exerts a pressure force with the boot toward the ski (see Fig. 1). Gignoux et al. do not disclose a recess in the upper surface of the ski.

Bejean et al. disclose a cross-country ski system in which a part of the binding (rib 2) is received in an upwardly facing recess (Fig. 7) in the upper surface (8) of a ski (1). It is noted that in various embodiments, Bejean et al. discuss the possibility of forming a plate (5a, 7 – see Figs. 4 and 6) integrally with the ski. Therefore, it would have been obvious to form plate (8) integrally with the ski.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the binding device (1) disclosed by Gignoux et al. such that it was partially sunk into a recess in the upper surface of the ski, as shown by Bejean et al., to ensure proper positioning of the binding device on the ski and to increase the security between the binding device and the ski.

As for claims 9 and 11, Bejean et al. disclose lateral shoulders formed by said recess (Fig. 7) such that a boot can be supported directly on the shoulders (see Figs. 7

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and 10). The shoulder support surface for the boot is above the surface in the recess which supports the binding element.

As for claims 10 and 12, Gignoux et al. disclose two lateral upper surfaces arranged on respective sides of the binding and in the metatarsophalangeal bending zone of a wearer's foot (Fig. 1).

As for claim 13, Gignoux et al. and Bejean et al. meet all the limitations as described above with respect to claim 8. Gignoux et al. further disclose a binding device including a mechanism (4) for engagement with the boot.

As for claim 14, Gignoux et al. teach a cross-country ski system wherein a binding device (1) has a lesser width than the width of the ski (9).

As for claims 15, 18, and 19, Gignoux et al. disclose a rib (see 8 and Figs. 1 and 3) adapted to be positioned within a recess in a sole of the boot (see Figs. 4 and 6). There is no baseplate mounted between the boot and the upper support surface of the ski in the system shown by Gignoux et al. (see Fig. 1) that would interfere with direct contact between the boot and the lateral upper support surfaces. Furthermore, the teachings of Bejean et al. suggest supporting the boot directly on the upper support surface of the ski (Figs. 1 – 5, 9, 10). While Bejean et al. show a plate in certain embodiments (see 7, 8, 9 – Figs. 6 – 8), said plate is shown as an obvious variant of the integral structure shown in the embodiments of Figs. 1 – 5.

As for claim 17, Gignoux et al. further disclose a front jaw (15), a front bar (61), an elastic return mechanism (6), and a rear bar (62).

As for claim 20, Gignoux et al. disclose a support surface in the metatarsophalangeal bending zone of a wearer's foot (Fig. 1).

As for claim 21, Gignoux et al. and Bejean et al. meet all the limitations as described above with respect to claim 13. Gignoux et al. further disclose a ski (9) having a upper surface width greater than a width of the binding device (1). Gignoux et al. further disclose a rib (8).

As for claims 22 and 24, as discussed above, the combination of Gignoux et al. and Bejean et al. teach an assembly in which the boot is supported directly by the upper surface of the ski, without interference from a baseplate.

As for claim 23, Gignoux et al. further disclose a front jaw (15), a front bar (61), an elastic return mechanism (6), and a rear bar (62).

As for claims 25 and 26, Gignoux et al. teach a binding zone (1) having a width less than that of the ski for the entire length of the binding zone, thus exposing lateral support surfaces (see Fig. 1).

As for claim 27, 30, and 35, Bejean et al. teach an upper support surface (8) extending to an outer transverse edge of the ski and a recess extending to a depth below the upper support surface (Fig. 7).

As for claim 28, 31, and 36, Bejean et al. disclose a recess in the area of the metatarsophalangeal bending zone (see Figs. 7, 11, and 12).

As for claims 29, 32 – 34, and 37 – 39, Gignoux et al. show a boot-sole engaging rib that is a part of the ski, rather than a part of the binding. However, it would have been obvious to form the rib as part of the binding as a matter of obvious design choice.

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Forming the rib as part of the removable binding would allow the ski itself to be used with a different binding in another activity (e.g. downhill skiing) in which a rib may not be desired. It has been held that a mere rearrangement of the working parts of an invention requires only routine skill in the art. It is noted that the rib disclosed by Gignoux et al. extends rearward of the binding mechanism (Fig. 6).

**Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bejean et al. (US 5,011,179) in view of Gignoux et al. (US 6,390,494) as applied to claim 8 above, and further in view of Kenney (US 6,257,620).**

Bejean et al. and Gignoux et al. meet all the limitations of the claimed invention, but do not disclose an upper surface that is narrower than a gliding surface. Kenney teaches a ski having an upper surface (21) that is wider than a gliding surface (22) – see Fig. 2, lower left embodiment. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the ski taught by Gignoux et al. to have a narrower gliding surface to minimize surface contact, thus reducing drag.

### ***Response to Arguments***

Applicant argues that Bejean et al. do not disclose a binding device received in a recess. It is maintained that the element received in the recess constitutes at least a part of the binding device, as it limits lateral movement of the boot and therefore assists in retaining the boot on the board.

Applicant argues that Gignoux et al. do not disclose upper support surfaces which are contacted directly by the boot. It is well known in the art to provide a rib which serves to guide the boot to the proper lateral position, not to bear the entire

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weight of boot and its wearer (see, for example, Bejean Figs. 1 – 5). It is apparent that allowing the boot to rest on the ski surface, rather than balance on the rib would provide a more stable binding and reduce the potential for injury. Applicant has provided no evidence that the boot is incapable of contacting the upper support surfaces, therefore it is maintained that said surfaces are "exposed . . . for coming in direct contact with the boot . . . when a skier exerts a pressure force with the boot toward the ski."

Applicant argues that Kenney is non analogous art. However, it is maintained that the teachings of Kenney related to the size and shape of a gliding surface are applicable to the ski taught by Gignoux et al.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.



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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Katy Meyer whose telephone number is (571)272-5830. The examiner can normally be reached on Monday - Thursday, 8:00 am to 6:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Paul Dickson can be reached on 571-272-7742. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/K. M./  
Examiner, Art Unit 3618

/GLENN DAYOAN/  
Supervisory Patent Examiner, Art  
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